

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IFEYHEWEN BADIDI,	§	
TDCJ-CID #56587-179,	§	
	§	
Petitioner/Defendant,	§	
	§	
v.	§	CIVIL ACTION NO. H-09-3183
	§	(Criminal No. H-07-206-02)
	§	
UNITED STATES OF AMERICA,	§	
	§	
Respondent/Plaintiff.	§	

MEMORANDUM OPINION AND ORDER


Defendant Ifeyhewen Badidi has filed a Petition by Federal Prisoner to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Docket Entry No. 155)¹ together with a Memorandum in Support (Docket Entry No. 156). The government has filed a Response to the defendant's motion (Docket Entry No. 159). In its response the government does not contest defendant's claim that his counsel provided ineffective assistance in failing to pursue defendant's direct appeal. (Docket Entry No. 159, p. 16) The government suggests that the court order the District Clerk to re-enter the Judgment and to file a Notice of Appeal on defendant's behalf. The court agrees. See United States v. West, 240 F.3d 456, 458 (5th Cir. 2001); Mack v. Smith, 659 F.2d 23, 26 (5th Cir. 1981).

¹All docket entry references are to Criminal No. H-07-206.

Accordingly, the court **ORDERS** the District Clerk to re-enter the Judgment (Docket Entry No. 108) and to file a Notice of Appeal on behalf of the defendant. Because many, if not all, of defendant's remaining claims may be the subject of an appeal, the court will dismiss this action pending his appeal.

The court notes that in his Plea Agreement defendant expressly waived "the right to contest his conviction or sentence by means of any post-conviction proceeding." (Plea Agreement, Docket Entry No. 80, p. 5) Defendant is advised that should he file any additional post-conviction motions at the conclusion of his appeal, the court may enforce this waiver.

SIGNED at Houston, Texas, on this 23rd day of December, 2009.


SIM LAKE
UNITED STATES DISTRICT JUDGE